

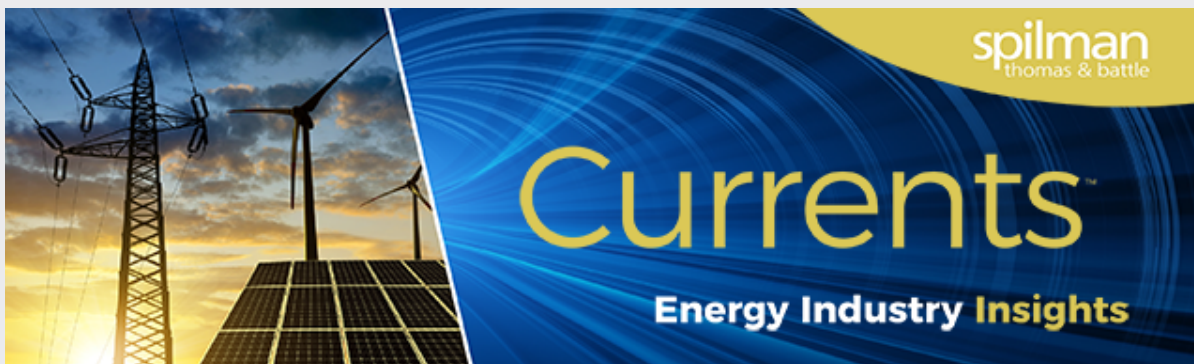
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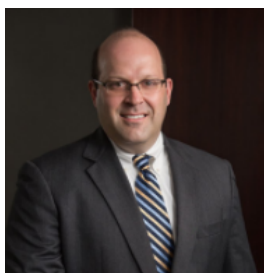


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Issue 46, 2020

● [Welcome](#)



Welcome to our 46th issue of *Currents* for 2020. Our Energy Practice Group looked at current energy articles, and we also explain the significance of every article. These issues peaked our interest this week, and we have summarized why they are important and how they may impact the energy sector.

In addition, our COVID-19 Task Force has been busy looking at the effects of the pandemic. With the release of a new COVID-19 vaccine comes hopes of a return to "normalcy" and new concerns for how to protect your workforce.

Can you make vaccines mandatory for your employees? If so, what considerations must you take into account as you craft your policies? **Join us Thursday, December 17, 2020 from 12:00 PM to 1:00 PM EST for our free webinar - Get Keen on the Vaccine: Considerations for Employers Considering a Mandatory COVID-19 Vaccine.** Spilman attorneys Carrie Grundmann and Megan Mullins will walk you through how to manage this transition while ensuring you stay compliant with existing labor and employment laws. [Register now!](#)

[Nicholas S. Preservati](#)

Co-Chair, Energy Practice Group

● [Court Rejects Trump Challenge of DTE Agreement to Retire 3 Coal Plants](#)

"The order from the Southern Division of the Eastern U.S. District Court of Michigan rejected EPA's argument, ruling the agreement constituted a private settlement, not a consent decree that the court should be involved in."

Why this is important: A federal court in Michigan has ruled a settlement agreement between DTE and the Sierra Club was a private settlement between litigants, not a consent decree, so it was not reviewable by the court. DTE agreed to close three coal-fired power plants and provide \$2 million to electrify buses and to energy savings projects in the private settlement. The U.S. Department of Justice objected because it had agreed to a consent decree under the Clean Air Act that left the power plants operating. The U.S. District Court for the Eastern District of Michigan ruled it was a private settlement and it would not disturb its terms as it did not require court approval. As the Sierra Club continues to press the closing of coal-fired power plants, it will be worth watching appeals of this decision and whether this method will be used in other states. --- [Mark E. Heath](#)

● [Shale Executives See Little Chance of Significant Growth](#)

"Shale oil executives themselves see little chance for major production growth in the patch in the next few years—if ever—as OPEC reasserted itself as the ultimate swing producer globally with its April production cut deal that is still keeping a floor under prices."

Why this is important: U.S. shale oil production in September increased to 10.86 bpd and drilling has been recovering in the past few months, but industry experts predict production will remain overall lower due to the pandemic and OPEC's control of oil prices as the swing producer. Domestic shale had been expected to be a formidable rival to OPEC and was the world's largest oil producer last year. After the pandemic struck, production fell as much as 3.4 million barrels a day over a few months because of low oil prices and low demand. These market forces, along with the high capital costs of shale production, the push for green energy, and OPEC's recent agreement to increase production by a half of million barrels starting next year are causing many producers and investors to question whether the market can have a healthy recovery post-pandemic. --- [Dennise R. Smith](#)

● [Microgrids Might Make Sense for 'Everyday' Enterprises](#)

"And microgrids are no exception: businesses want networks that are resilient and sustainable at prices they can afford."

Why this is important: Microgrids are an intriguing development that are finding their way in the national electrical power structure. They are small local generators (think solar panels on homes or businesses) that alone, or in coordination with others, harness power from, and provide power to, interconnected electrical users. While battery storage can increase their viability, most still require connection to the grid, and that raises questions about whether ratepayers or microgrid developers will pay the costs of keeping part-time users on the grid. --- [David L. Yaussy](#)

● [Blackjewel's Former CEO Wants Firm to Convert Bankruptcy to Liquidation](#)

"But many outstanding issues — from unclaimed mining permits to millions of dollars in unpaid royalties and feuds with creditors — have hampered the debtors from formally exiting bankruptcy."

Why this is important: The Blackjewel Coal bankruptcy case continues -- some 18 months after filing. Now, its former CEO wants the bankruptcy converted to a Chapter 7 liquidation. The bankruptcy estate has less than \$150,000 in cash, no operating mines, and millions of unpaid royalties, taxes, debts and unpaid wages. Mines that did not sell in last year's in bankruptcy sales will be listed for sale again. But,

the estate owes more than \$50 million in royalties with large reclamation and other debts and obligations. With this bankruptcy still in process, at least two other companies filed for bankruptcy this month and more are expected. --- [Mark E. Heath](#)

● [Google Calls for More RTOs, Designs 'Intelligent Platform' to Meet 24/7 Clean Energy Goal](#)

"Google is designing an 'intelligent computing platform' that aligns its operations with the availability of renewable energy resources."

Why this is important: In a move designed to better harness available renewable energy, Google has designed an intelligent program to help it align its operations with periods where renewable energy is plentiful on the grid. While this measure will support Google's stated goal to use 100 percent renewable energy for its operations, it will not fully realize the goal. However, according to Google, only through improvements in technology (e.g., battery storage) that can make renewable energy available around the clock and greater customer access to wholesale markets can its goal actually be achieved. --- [Carrie H. Grundmann](#)

● [Not Even Donald Trump Could Reverse Coal's Decline](#)

"Those measures were welcomed by the industry, but there were other forces at work, market forces that are making thermal coal less marketable."

Why this is important: One of Donald Trump's key campaign promises was to "put the miners back to work," and his presidency took steps to accomplish that goal, such as pulling out of the Paris Climate Agreement, lifting environmental regulations regarding streams and power plant emissions, and ending restrictions on federal coal leasing. However, four years later, those efforts had no measureable results, particularly in West Virginia where he made those promises. Nationwide third quarter coal employment is down 23 percent, and coal production is down 31.5 percent compared to the first quarter of 2017 when Trump took office. While West Virginia did see coal miner employment increases in 2018 and 2019, the WVU Bureau of Business and Economic Research reports that employment fell to 11,000 in the second and third quarters of 2020, a little over 2,000 less than when Trump took office. Although the impact of the pandemic on the industry is undeniable, market forces were already wreaking havoc as power companies reduced their reliance on coal and began shifting to natural gas, and carbon neutrality became a goal for many top consumers of energy and lending companies. The prognosis for coal appears to be dim, particularly for thermal coal, as the list of thermal coal mines filing for Chapter 11 bankruptcy grows. While metallurgical coal production is expected to survive because of its export value, that market is also demand sensitive and subject to swings in employment. --- [Dennise R. Smith](#)

● [Increasing Backing by Governments and Regulatory Bodies to Push Growth of Offshore Wind Turbines Market and Help Reach ~US\\$120 Bn by 2030](#)

"Companies in the offshore wind turbines market are increasing their R&D muscle to design floating wind models that are less bulky and less expensive."

Why this is important: Offshore wind turbines are a promising development in the area of renewable energy, as offshore winds tend to be more reliable and stronger. However, operation and maintenance costs tend to be higher, as well. As the article notes, "policy-based incentive schemes" (i.e. subsidies) are likely to be necessary in the near future, until the higher costs of operating in a marine environment are brought down. --- [David L. Yaussy](#)

● Upside for Coal, but It's Likely to be Limited

"Thermal coal prices have traded down to more than a decade low this year, given the large scale industry shutdowns during the peak of lockdowns and a weak global gas market only added to the pressure."

Why this is important: Thermal coal used for electric generation has seen price declines for 10 years, and low natural gas prices have driven steam coal to record lows this year. Electric generation in China recently increased 4.6 percent, but Europe is still down 1.6 percent, and U.S. electrical demand is down 7 percent. Analysts now see 2021 as good for steam coal as a return for electrical demand will lead to increased coal burn and prices. However, long term, analysts continue to see a decline in the demand for steam coal in Europe, the U.S. and Asia as countries continue to plan to go carbon neutral by 2035 or 2050. --- [Mark E. Heath](#)

● Oil, Natural Gas Trade Groups Join Forces

"Members of the Independent Oil and Gas Association of West Virginia and West Virginia Oil and Natural Gas Association announced their recent vote to merge into one organization called the Gas and Oil Association of WV (GO-WV)."

Why this is important: For many years, we have had two oil and gas associations in West Virginia -- WVONGA and IOGA. At one time, WVONGA tended to represent the larger producers, and especially gas transmission companies, while IOGA represented smaller producers who needed to transmit their gas at rates they could afford. Times have changed and now the associations have similar, and often overlapping, members, and the two groups will merge. Charlie Burd, present head of IOGA, will take the reins of the new group, called the Gas and Oil Association of West Virginia (GO-WV) . --- [David L. Yaussy](#)

● Energy Question of the Week

Last Week's Question and Results

What is your primary source of energy news and information?

Internet - 29.6%
Industrial/Environmental Newsletters - 22.2%
Newspaper - 14.8%
Television - 7.4%
Work/School - 11.1%
Other - 14.8%

What will happen to natural gas demand in the United States in 2021?

Significantly Increase

Select

Moderately Increase

Select

No Change

Select

Moderately Decrease

Select

Significantly Decrease

Select

Do Not Know

Select

● EIA Energy Statistics

Here is a round-up of the latest statistics concerning the energy industry.

PETROLEUM

This Week in Petroleum

Weekly Petroleum Status Report

NATURAL GAS

Short-Term Energy Outlook - Natural Gas

Natural Gas Weekly Update

Natural Gas Futures Prices

COAL

Short-Term Energy Outlook - Coal

Coal Markets

Weekly Coal Production

RENEWABLES

Short-Term Energy Outlook

Monthly Biodiesel Production Report

Monthly Densified Biomass Fuel Report

What are your areas of interest? If there are particular industries or issues that you would like to hear about, [email us!](#) We have a large number of attorneys willing to weigh in on the issues that impact you and your business.

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